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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,154	10/23/2001	Louis Lagler	P56559PCT	7578

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ROBERT E. BUSHNELL
1522 K STREET NW
SUITE 300
WASHINGTON, DC 20005-1202

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/890,154

Applicant(s)

LAGLER ET AL

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-46 is/are pending in the application.
- 4a) Of the above claim(s) 35-37 and 44-46 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-34 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-20 and 36-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7-27-01 & 1-28-03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Applicant's election with traverse of the election by original presentation in the reply filed on October 13, 2004 is acknowledged. The traversal is on the ground(s) that the claims have a special technical feature of a "closed injection molded closure". This is not found persuasive because the election by original presentation was made for because of the prosecution history of the instant application. The "restriction" has been made since the originally filed claims were directed to a closed injection molded closure only. In a subsequent amendment, applicant added claims directed to a process of making a closed injected molded closure. Thus, since applicant had already received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. Applicant's specification as originally filed in the instant application as well as the priority specification of PCT/CH99/00510 both set forth figure 1 as illustrating a prior art closure. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 1 is objected to because of the following informalities: in line 8, "each said hinge connections" should read -- each said hinge connection --. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claims 1-4,6-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the planes" and "each said plane" in lines 9 and 11, respectively. There is insufficient antecedent basis for this limitation in the claim. Previously set forth in the claim is "each said hinge connections making a first angle with one another and defining a plane". This does not positively set forth more than one angle.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1,2, 6-10,13,14,15,17, and 38-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Nozawa (US 5,148,912).

The closure of Nozawa illustrated in figures 6-9 anticipates the claimed closure. It is noted that the second closure part is stable in the open and closed positions and the hinge planes are inclined relative to a closure axis (to the degree "a closure axis" is set forth).

It is noted the limitation of the hinge connections being accessible in the mold from the inside of the closure and from outside the closure does not structurally limit the finished claimed product.

Claim Rejections - 35 USC § 103

7. Claims 3,4, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Dubach (US 5,392,938).

Nozawa teaches the claimed closure except for at least one element initially connecting the two closure parts in the closed position.

Dubach teaches it is known to initially secure two hinged closure parts together.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an element to initially secure the two closure parts together in a closed position. Doing so provides a tamper-indicating arrangement and ensures the integrity of the contained product prior to first use.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Altherr (US 5,270,011).

Nozawa teaches the claimed closure except for a thickened edge of an inner tubular element.

Altherr teaches it is known to provide a thickened edge formed by a bead on a lower edge of an inner tubular element for sealing an associated opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a thickened edge formed by a bead on a lower edge of an inner tubular element. Doing so allows for sealing an associated opening and accounts for imperfections in the edge of the opening.

9. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nozawa in view of Gach et al. (US 4,826,026).

Nozawa teaches the claimed closure except for a catch.

Gach teaches it is known to provide a catch between the closure parts to prevent unintentional opening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a catch to the closure of Nozawa. Doing so allows for unintentional opening.

Allowable Subject Matter

10. Claims 21-34 are allowed over the art of record.

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11. Claims 11, 12, and 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments filed October 13, 2004 have been fully considered but they are not persuasive.

The remarks regarding the "restriction" requirement have been addressed above with respect to the appropriateness of the election by original presentation.

In answer to applicant's arguments with respect to the special technical feature, "a closed injection molded closure" is not a structural feature and thus is not a technical feature that defines a contribution over the prior art.

Regarding the drawings, applicant's specification as originally filed in the instant application as well as the priority specification of PCT/CH99/00510 both set forth figure 1 as illustrating a prior art closure. Additionally, applicant filed an annotated drawing sheet on September 23, 2004 labeling figure 1 as "prior art". Thus, applicant *admits* the figure is an illustration of a prior art closure. It is unclear why applicant is now requesting reconsideration of a requirement applicant fully appreciates as being substantiated by the statutes.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., each plane is inclined relative to a central vertical axis) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Any axis which is centrally located on the closure is a central axis to which the planes are inclined either horizontally or vertically. The central vertical axis depicted in the drawings is not read into the claims.

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Regarding applicant's arguments directed to process-by-product limitations of the claims, the claimed feature of "with the two connecting elements and the two pairs of hinge connections being accessible in the mould from the inside of the closure and from the outside of the closure" is a feature of the molding process, not of the finished product. Once the closure is removed from the mold, one cannot determine the accessibility of the hinge connections with regard to the inside or the outside of the mold. Thus, this claimed feature does not lend structure to the closure.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the

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reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
January 10, 2005


Robin A. Hylton
Primary Examiner
GAU 3727